



March 29, 2000

Mr. Dennis P. Duffy
General Counsel
University of Houston System
E. Cullen Building, Room 212
Houston, Texas 77204-2162

OR2000-1214

Dear Mr. Duffy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133514.

The University of Houston (the "university") received a request for the following information:

1. All communications between University of Houston officials concerning the referral of the Mike DeRouselle case to the Harris County District Attorney's Office.
2. All communications between University of Houston officials concerning the status of George Hess as chief of the UH campus security agency.
3. All communications between UH officials concerning changes in UH policy concerning the reporting of criminal activities on campus.

You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

The submitted documents contain information that is excepted from disclosure under section 552.101 of the Government Code.¹ Section 552.101 encompasses information protected by other statutes. Among the information submitted for our review is a notation that appears to contain criminal history record information ("CHRI") generated by the Texas Crime Information Center ("TCIC"), the National Crime Information Center ("NCIC"), or the district attorney. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The

¹The Office of the Attorney General will raise mandatory exceptions like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, *see* Open Records Decision No. 565 (1990), and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the information which must be withheld pursuant to section 552.101 of the Government Code.

We will now address your claimed exceptions with regard to the remaining submitted information. You assert that section 552.103 of the Government Code excepts from disclosure the requested information. Section 552.103(a) reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). You have provided our office a letter from an attorney representing the former university chief of police which discusses possible causes of action and references prior settlement communications with the university. You assert that the attorney "maintained that termination of his client's employment by the University of Houston would result in an unlawful breach of contract since he contended the termination was without legal cause." Additionally, you have provided our office with a notice of claim letter from an attorney representing a student. You represent that the notice of claim is in compliance with the notice requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101. *See* Open Records Decision No. 638 (1996) (fact that governmental body received claim letter that it represents to this office to be in compliance with notice requirements of Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance shows that litigation is reasonably anticipated). You contend that the information you have submitted as Exhibits A - D are related to both the claims asserted by

the attorney for the chief of police and those claims contained in the notice of claim letter from the student's attorney. We have reviewed your arguments and the submitted information, and determine that you have shown that litigation is reasonably anticipated and that the information is related to the anticipated litigation. Therefore, the information in Exhibits A - D may be withheld under section 552.103 of the Government Code, with the following exceptions.

Certain information you have submitted is public under section 552.022 of the Government Code unless the information is expressly made confidential under other law. "Other law," we believe, means the constitutional right to privacy, confidentiality statutes, and judicial decisions recognizing the common law right to privacy and the right to protect trade secrets from public disclosure. Thus, the university's raised exceptions are not other law that makes the information confidential. You have submitted court records and policy statements adopted by the university. We believe section 552.022 makes this information public. Gov't Code §§ 552.022(a)(10), (17). Therefore, the university must release to the requestor the information we have marked as subject to section 552.011.

Moreover, section 552.103(a) does not apply to basic information about a criminal incident. Open Records Decision No. 597 (1991). Furthermore, if the opposing parties in the litigation have seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .352.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

²Since section 552.103 is dispositive of the information at issue, we do not address your other claimed exceptions.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 133514

Encl. Submitted documents

cc: Mr. Tim Fleck
Staff Writer
Houston Press
1621 Milam, Suite 100
Houston, Texas 77002
(w/o enclosures)